IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5749 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NARAYNDAS GURUMUKHDAS DAVANI @ NARUBHAI G. DAVANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5749 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/08/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention

order passed by the District Magistrate, Vadodara dated 10.6.2002 in exercise of powers vested in him by sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (No. 7 of 1980) (hereinafter referred to as 'the PBM Act').

The petitioner has challenged the legality and validity of the order of detention on number of grounds. The detaining authority while passing the order has considered that (i) the petitioner was holding a valid licence to run a fair price shop at Vadodara near Municipal Shopping Centre no. 4, Harni, Vadodara. But he had handed over the management of this fair price shop to third person. (ii) On 24.5.2002, the District Supply Officer of district Vadodara had inspected the fair price shop with his team and the team in sudden checking found 1390 litres of blue kerosene which was supposed to be distributed to the card holders, from the barrals from a shop known as "Sainath". The petitioner was doing the business of free sale imported kerosene from that shop and a blue colour kerosene was found from free sale shop. (iii) There were material irregularities found in the maintenance of stock and distribution of wheat and rice. (iv) In a table, unauthorised disposal of the stock of food grains is also mentioned in the grounds for detention served to the detenu. (v) On 4.6.2002, some stock was taken from the Govt. godown as per the permit issued to three other fair price shop licence holders and the authority found that this stock had never reached to all these shops mentioned in para-7 of the grounds and the same was disposed of unauthorisedly by the detenu. (vi) It is also one of the allegation that the petitioner has attempted to unload 20kg. of wheat from a tempo near a fair price shop of Jayesh Kantilal Solanki and the petitioner has tried to mislead the officers of the Civil Supplies Department. One main ground for detention is that the petitioner is indulging in siphoning of blue colour kerosene and the food grains requires to be distributed from fair price shop and is selling the same with higher price in open market. Accepting the allegations made by the sponsoring authority, the detaining authority has recorded the subjective satisfaction and the order under challenge came to be passed.

After service of rule, the respondent-Union of India, has filed affidavit-in-reply and the same is tendered by Ms. PJ Davawala learned Addl. Central Govt. Standing Counsel. In the same way, ld. AGP Mr. AY Kogje has filed affidavit-in-reply today and the same is

also taken on record.

Ld. Counsel Mr Prajapati has taken me through the entire memo of petition and various grounds of challenge, however, he has restricted his arguments mainly on one point and has pointed out that in the present case that the order under challenge is not sustainable and at least this Court should quashe the continued detention of the petitioner on this sole ground that the detaining authority has not cared to deal with the representation made by the detenu very promptly as per the settled legal position. He has satisfied this Court that the representation of the detenu made to the detaining authority on 17.6.2002, Annexure-C, page 24, has not been responded with due care and diligence. This representation has reached to the office of District Magistrate, Vadodara- detaining authority, the zerox copy of the acknowledgement is at page 28. IN response of the query raised by the Court, Ld. AGP has accepted that the representation had reached to the office of detaining authority on 18.6.2002, however, for the reasons best known to the detaining authority the same was not forwarded either to the State Government or to the Union of India till 25.6.2002. The affidavit-in-reply filed on behalf of the respondent-State Government only indicates that the order of detention dated 10.6.2002 was approved by the Government on 21.6.2002 i.e. within 12 days and the State Government had received the representation for the first time on 29.6.2002 vide letter dated 25.6.2002 written by the District Magistrate, Vadodara. The affidavit-in-reply filed on behalf of the State Government does not deal with the delay caused in dispatching the representation to the State Government by the office of the detaining authority. There is no formal affidavit filed by the detaining authority in the matter. So, the delay caused in dispatching and dealing with the representation with utmost care and due diligence with all promptness remains unexplained. Obviously, till 21.6.2002 there was no formal approval by the State Government, so it was possible even for the detaining authority to deal with the representation either on 18th, 19th or 20th June, 2002. This exercise has also not been done by the detaining authority and inaction on the part of detaining authority vitiates the continued detention. So, on this sole ground, petition shall have to be allowed.

It is not necessary to refer any relevant decision because it is well settled that the delay caused in the procedure, while dealing with and disposing of the representation made by the detenu requires to be

satisfactorily explained. Unexplained delay goes to the root of the validity of the order of detention as well as continued detention. Considering the rights flowing from the Article 22(5) of the Constitution of India, and in view of the above set of facts, on this sole ground, the petition shall have to be allowed.

In the result, this petition is allowed to the extent that continued detention of the detenu pursuant to the impugned order of detetnion dated 10.6.2002 passed by the District Magistrate, Vadodara, against the detenu is hereby held to be illegal and bad in law and detenu is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute accordingly. DS Permitted.

(C.K. BUCH, J.)
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